

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



SEAF ALMASHIAKHY,

Plaintiff,

v.

23-CV-841 (JLS) (JJM)

CHRISTOPHER WRAY – FBI
DIRECTOR; FBI SUPERVISOR #1;
FBI AGENTS #1, #2, #3, #4, AND #5;
DAVID PEKOSKE – TSA
ADMINISTRATOR; TSA OFFICERS #1
& #2; AIRPORT POLICE OFFICERS
#1, #2, #3, AND #4; UNITED
AIRLINES EMPLOYEE JANE DOE;
and UNITED AIRLINES,

Defendants.

DECISION AND ORDER

Plaintiff commenced this action on August 15, 2023, asserting claims under 42 U.S.C. § 1983 for alleged violations of his Constitutional rights stemming from his alleged placement on the Department of Homeland Security's "no-fly" list. *See* Dkt. 1 at 8-10. The case has been referred to United States Magistrate Judge Jeremiah J. McCarthy for all proceedings under 28 U.S.C. §§ 636(b)(1)(A), (B), and (C). Dkt. 11.

Three motions to dismiss are pending. Defendants Airport Police Officer #1, #2, #3 and #4 moved to dismiss on November 15, 2023. Dkt. 9. Plaintiff did not oppose the motion. Defendants Christopher Wray and David Pekoske moved to

dismiss on December 11, 2023. Dkt. 17. Plaintiff opposed that motion, Dkt. 19, and the movants replied. Dkt. 20-21. Plaintiff then filed a sur-reply. Dkt. 26.

Defendant United Airlines, Inc., moved to dismiss on February 5, 2024. Dkt. 27. Plaintiff opposed the motion, Dkt. 29, and the movant replied. Dkt. 30. Plaintiff then moved to amend the Complaint on July 11, 2024. Dkt. 31.

On September 24, 2024, Judge McCarthy issued a Report and Recommendation (R&R) addressing the motions to dismiss (Dkt. 9, 17, 27) and the motion to amend (Dkt. 31). Dkt. 33. He recommends that this Court grant Defendants' motions to dismiss (Dkt. 9, 17, 27). *Id.* at 29. He further recommends that, given the similarities between Plaintiff's proposed Amended Complaint (Dkt. 31-2) and the original Complaint (Dkt. 1), this Court deny Plaintiff's motion to amend without prejudice to filing an amended complaint that addresses the deficiencies identified in the R&R. *Id.* Neither party filed objections, and the time to do so has expired. *See* Dkt. 35.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge's recommendation to which a party objects. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985).

This Court carefully reviewed the R&R and, based on that review, and in the absence of any objections, the Court accepts Judge McCarthy's recommendation.

Thus, for the reasons in the R&R, Defendants' motions to dismiss (Dkt. 9, 17, and 17) are GRANTED. Further, given the similarities between Plaintiff's Proposed Amended Complaint (Dkt. 31-2) and the Complaint (Dkt. 1), Plaintiff's motion to amend (Dkt. 31) is DENIED as moot, without prejudice to filing an Amended Complaint that addresses the deficiencies identified in the R&R. The case is referred back to Judge McCarthy consistent with the November 16, 2023 referral order. *See* Dkt. 11.

SO ORDERED.

Dated: November 12, 2024
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE